SUPREME COURT OF THE UNITED STATES.

No. 656.—October Term, 1917.

Charles E. Ruthenberg, Alfred Wagenknecht, and Charles Baker, Plaintiffs in Error, *vs.* The United States of America.	In Error to the District Court of the United States for the Northern District of Ohio.

[January 14, 1918.]

Mr. Chief Justice White delivered the opinion of the Court.

Schue was indicted for having failed to register as required by the Act of Congress of May 18, 1917 (Public No. 12, 65th Congress, c. —, — Stat. —) known as the Selective Draft Law, and in the same indictment it was charged that Ruthenberg, Wagenknecht and Baker, the plaintiffs in error "did aid, abet, counsel, command and induce" Schue in failing to register "and procure him to commit the offense involved in his so doing." Schue pleaded guilty and the other three defendants were tried, found guilty and sentenced. Because of objections raised to the constitutionality of the Act this direct writ of error was prosecuted.

As every contention made in this case concerning the unconstitutionality of the Selective Draft Law was urged in *Arver* v. *United States*, *ante*, p. —, and held to be without merit, that subject may be put out of view. The remaining assignments of error are to say the least highly technical and require only the briefest notice.

The want of merit in the proposition that constitutional or statutory rights were denied the plaintiffs in error who were Socialists, because the grand and trial juries were composed exclusively of members of other political parties and of property owners, is demonstrated by previous adverse rulings upon similar contentions urged by negro defendants indicted and tried by juries composed of white men. *Martin* v. *Texas*, 200 U. S. 316, 320, 321; *Thomas* v. *Texas*, 212 U. S. 276, 282.

A further objection that plaintiffs in error were prejudiced by the refusal of the court below to permit them in examining the

jurors to inquire whether they distinguished between socialists and anarchists is likewise disposed of by previous decisions. *Spies* v. *Illinois*, 123 U. S. 131; *Thiede* v. *Utah Territory*, 159 U. S. 510; *Holt* v. *United States*, 218 U. S. 245, 248.

It is contended that plaintiffs in error were not tried by a jury of the state and district in which the crime was committed, in violation of the Sixth Amendment, because the jurors were drawn not from the entire district but only from one division thereof. The proposition disregards the plain text of the Sixth Amendment, the contemporary construction placed upon it by the Judiciary Act of 1789 (c. 20, 1 Stat. 73, 88, sec. 29) expressly authorizing the drawing of a jury from a part of the district, and the continuous legislative and judicial practice from the beginning. Section 802, Revised Statutes; Section 277, Judicial Code. *Agnew* v. *United States*, 165 U. S. 36, 43; *United States* v. *Wan Lee*, 44 Fed. Rep. 707; *United States* v. *Ayres*, 46 Fed. Rep. 651; *United States* v. *Peuschel*, 116 Fed. Rep. 642, 646; *Clement* v. *United States*, 149 Fed Rep. 305; *Spencer* v. *United States*, 169 Fed. Rep. 562, 565, 566; *United States* v. *Merchants, &c. Co.*, 187 Fed. Rep. 355, 359, 362.

It is argued that the court below erred in refusing to quash the indictment on the ground that it had been found "without a sworn charge previously made." It is settled that such a charge is unnecessary. *Frisbie* v. *United States*, 157 U. S. 160, 163; *Hale* v. *Henkel*, 201 U. S. 43, 59, 60.

Further, it is said, the indictment was insufficient because it did not allege that Schue, who it was charged refused to register, was a citizen of the United States or was a person not an alien enemy who had declared his intention to become such citizen. But this overlooks the fact that although only the persons described were subject to military duty under the terms of the Act, by section 5 "all male persons between the ages of 21 and 30, both inclusive" (with certain exceptions not here material) were required to register. It was sufficient to charge, therefore, as the indictment did, that Schue was a male person between the designated ages.

The contention that more than one offense was charged in the same indictment is without merit. Section 332 of the Criminal Code provides that "Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces or procures its commission, is a

principal." The indictment, therefore, charged but one offense—the refusal of Schue to register—plaintiffs in error being charged as principals in procuring such refusal. And this also disposes of a further contention based upon the same misconception that as at common law there could be no accessory to a misdemeanor, no offense was charged in the indictment.

Other errors are assigned but we do not expressly notice them, some because they are not urged in argument, others because they are so unsubstantial as not to require even statement, and we content ourselves with saying that after a careful examination of the whole record we find no error and the judgment is

Affirmed.

A true copy.

Test:

Clerk Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

Nos. 663, 664, 665, 666, 681 and 769.—October Term, 1917.

Joseph F. Arver, Plaintiff in Error, 663 *vs.* The United States of America. Alfred F. Grahl, Plaintiff in Error, 664 *vs.* The United States of America. Otto Wangerin, Plaintiff in Error, 665 *vs.* The United States of America. Walter Wangerin, Plaintiff in Error, 666 *vs.* The United States of America.	In Error to the District Court of the United States for the District of Minnesota.
Louis Kramer, Plaintiff in Error, 681 *vs.* The United States. Meyer Graubard, Plaintiff in Error, 769 *vs.* The United States of America.	In Error to the District Court of the United States for the Southern District of New York.

[January 7, 1918.]

Mr. Chief Justice White delivered the opinion of the Court.

We are here concerned with some of the provisions of the Act of May 18, 1917 (Public No. 12, 65th Congress, c. —, —Stat. —.) entitled "An Act to authorize the President to increase temporarily the military establishment of the United States." The law, as its opening sentence declares, was intended to supply temporarily the increased military force which was required by the existing emergency, the war then and now flagrant. The clauses we must pass

upon and those which will throw light on their significance are briefly summarized.

The Act proposed to raise a national army, first, by increasing the regular force to its maximum strength and there maintaining it; second, by incorporating into such army the members of the National Guard and National Guard Reserve already in the service of the United States (Act of Congress of June 5, 1916, c. 134, 39 Stat. 211) and maintaining their organizations to their full strength; third, by giving the President power in his discretion to organize by volunteer enlistment four divisions of infantry; fourth, by subjecting all male citizens between the ages of twenty-one and thirty to duty in the national army for the period of the existing emergency after the proclamation of the President announcing the necessity for their service; and fifth, by providing for selecting from the body so called, on the further proclamation of the President, 500,000 enlisted men, and a second body of the same number should the President in his discretion deem it necessary. To carry out its purposes the Act made it the duty of those liable to the call to present themselves for registration on the proclamation of the President so as to subject themselves to the terms of the Act and provided full federal means for carrying out the selective draft. It gave the President in his discretion power to create local boards to consider claims for exemption for physical disability or otherwise made by those called. The Act exempted from subjection to the draft designated United States and state officials as well as those already in the military or naval service of the United States, regular or duly ordained ministers of religion and theological students under the conditions provided for, and while relieving from military service in the strict sense the members of religious sects as enumerated whose tenets excluded the moral right to engage in war, nevertheless subjected such persons to the performance of service of a non-combatant character to be defined by the President.

The proclamation of the President calling the persons designated within the ages described in the statute was made and the plaintiffs in error who were in the class and under the statute were obliged to present themselves for registration and subject themselves to the law failed to do so and were prosecuted under the statute for the penalties for which it provided. They

all defended by denying that there had been conferred by the Constitution upon Congress the power to compel military service by a selective draft and if such power had been given by the Constitution to Congress, the terms of the particular Act for various reasons caused it to be beyond the power and repugnant to the Constitution. The cases are here for review because of the constitutional questions thus raised, convictions having resulted from instructions of the courts that the legal defences were without merit and that the statute was constitutional.

The possession of authority to enact the statute must be found in the clauses of the Constitution giving Congress power "to declare war; . . . to raise and support armies, but no appropriation of money to that use shall be for a longer term than two years; . . . to make rules for the government and regulation of the land and naval forces." Article I, sec. 8. And of course the powers conferred by these provisions like all other powers given carry with them as provided by the Constitution the authority "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers." Article I, section 8.

As the mind cannot conceive an army without the men to compose it, on the face of the Constitution the objection that it does not give power to provide for such men would seem to be too frivolous for further notice. It is said, however, that since under the Constitution as originally framed state citizenship was primary and United States citizenship but derivative and dependent thereon, therefore the power conferred upon Congress to raise armies was only coterminous with United States citizenship and could not be exerted so as to cause that citizenship to lose its dependent character and dominate state citizenship. But the proposition simply denies to Congress the power to raise armies which the Constitution gives. That power by the very terms of the Constitution, being delegated, is supreme. Article VI. In truth the contention simply assails the wisdom of the framers of the Constitution in conferring authority on Congress and in not retaining it as it was under the Confederation in the several States. Further it is said, the right to provide is not denied by calling for volunteer enlistments, but it does not and cannot include the power to exact enforced military duty by the citizen. This however but challenges the existence of all power, for a governmental power which has no sanction to it and which therefore can only be exercised pro-

vided the citizen consents to its exertion is in no substantial sense a power. It is argued, however, that although this is abstractly true, it is not concretely so because as compelled military service is repugnant to a free government and in conflict with all the great guarantees of the Constitution as to individual liberty, it must be assumed that the authority to raise armies was intended to be limited to the right to call an army into existence counting alone upon the willingness of the citizen to do his duty in time of public need, that is, in time of war. But the premise of this proposition is so devoid of foundation that it leaves not even a shadow of ground upon which to base the conclusion. Let us see if this is not at once demonstrable. It may not be doubted that the very conception of a just government and its duty to the citizen includes the reciprocal obligation of the citizen to render military service in case of need and the right to compel it. Vattel, Law of Nations, Book III, c. 1 & 2. To do more than state the proposition is absolutely unnecessary in view of the practical illustration afforded by the almost universal legislation to that effect now in force.* In England it is certain that before the Norman Conquest the duty of the great

*In the argument of the Government it is stated: "The Statesman's Yearbook for 1917 cites the following governments as enforcing military service: Argentine Republic, p. 656; Austria-Hungary, p. 667; Belgium, p. 712; Brazil, p. 738; Bulgaria, p. 747; Bolivia, p. 728; Columbia, p. 790; Chili, p. 754; China, p. 770; Denmark, p. 811; Ecuador, p. 820; France, p. 841; Greece, p. 1001; Germany, p. 914; Guatemala, p. 1009; Honduras, p. 1018; Italy, p. 1036; Japan, p. 1064; Mexico, p. 1090; Montenegro, p. 1098; Netherlands, p. 1191; Nicaragua, p. 1142; Norway, p. 1152; Peru, p. 1191; Portugal, p. 1201; Roumania, p. 1220; Russia, p. 1240; Serbia, p. 1281; Siam, p. 1288; Spain, p. 1300; Switzerland, p. 1337; Salvador, p. 1270; Turkey, p. 1353." See also the recent Canadian conscription act, entitled, "Military Service Act" of August 27, 1917, expressly providing for service abroad (printed in the Congressional Record of September 20, 1917, 55th Cong. Rec., p. 7959); the Conscription Law of the Orange Free State, Law No. 10, 1899; Military Service and Commando Law, sections 10 and 28; Laws of Orange River Colony, 1901, p. 855; of the South African Republic, "De Locale Wetten en Volksraadsbesluiten der Zuid Afr. Republiek," 1898, Law No. 20, pp. 230, 233, article 6, 28; Constitution, German Empire, April 16, 1871, Art. 57, 59; Dodd, 1 Modern Constitutions, p. 344; Gesetz, betreffend Aenderungen der Wehrpflicht, vom 11 Feb. 1888, No. 1767, Reichs-Gesetzblatt, p. 11, amended by law of July 22, 1913, No. 4264, RGBl., p. 593; Loi sur de recrutement de l'armee of 15 July, 1889 (Duvergier, vol. 89, p. 440), modified by act of 21 March 1905 (Duvergier, vol. 105, p. 133).

militant body of the citizens was recognized and enforcible. Blackstone, Book I, c. 13. It is unnecessary to follow the long controversy between Crown and Parliament as to the branch of the government in which the power resided, since there never was any doubt that it somewhere resided. So also it is wholly unnecessary to explore the situation for the purpose of fixing the sources whence in England it came to be understood that the citizen or the force organized from the militia as such could not without their consent be compelled to render service in a foreign country, since there is no room to contend that such principle ever rested upon any challenge of the right of Parliament to impose compulsory duty upon the citizen to perform military duty wherever the public exigency exacted, whether at home or abroad. This is exemplified by the present English Service Act.*

In the Colonies before the separation from England there cannot be the slightest doubt that the right to enforce military service was unquestioned and that practical effect was given to the power in many cases. Indeed the brief of the Government contains a list of Colonial Acts manifesting the power and its enforcement in more than two hundred cases. And this exact situation existed also after the separation. Under the Articles of Confederation it is true Congress had no such power, as its authority was absolutely limited to making calls upon the States for the military forces needed to create and maintain the army, each State being bound for its quota as called. But it is indisputable that the States in response to the calls made upon them met the situation when they deemed it necessary by directing enforced military service on the part of the citizens. In fact the duty of the citizen to render military service and the power to compel him against his consent to do so was expressly sanctioned by the constitutions of at least nine of the States, an illustration being afforded by the following provision of the Pennsylvania constitution of 1776. "That every member of society hath a right to be protected in the enjoyment of life, liberty and property, and therefore is bound to contribute his proportion toward the expense of that protection, and yield his personal service when necessary, or an equivalent thereto." Art. 8. (Thorpe, American Charters, Constitutions and Organic Laws, vol.

*Military Service Act, January 27, 1916, 5 and 6 George V, c. 104, p. 367, amended by the Military Service Act of May 25, 1916, 2nd session, 6 and 7, George V, c. 15, p. 33.

5, pp. 1081, 1082.* While it is true that the States were sometimes slow in exercising the power in order to fill their quotas—a condition shown by resolutions of Congress calling upon them to comply by exercising their compulsory power to draft and by earnest requests by Washington to Congress that a demand be made upon the States to resort to drafts to fill their quotas—that fact serves to demonstrate instead of to challenge the existence of the authority. A default in exercising a duty may not be resorted to as a reason for denying its existence.

When the Constitution came to be formed it may not be disputed that one of the recognized necessities for its adoption was the want of power in Congress to raise an army and the dependence upon the States for their quotas. In supplying the power it was manifestly intended to give it all and leave none to the States, since besides the delegation to Congress of authority to raise armies the Constitution prohibited the States, without the consent of Congress, from keeping troops in time of peace or engaging in war. Article I, sec. 10.

To argue that as the state authority over the militia prior to the Constitution embraced every citizen, the right of Congress to raise an army should not be considered as granting authority to compel the citizen's service in the army, is but to express in a different form the denial of the right to call any citizen to the army. Nor is this met by saying that it does not exclude the right of Congress to organize an army by voluntary enlistments, that is, by the consent of the citizens, for if the proposition be true, the right of the citizen to give consent would be controlled by the same prohibition which would deprive Congress of the right to compel unless it can be said that although Congress had not the right to call because of state authority, the citizen had a right to obey the call and set aside state authority if he pleased

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producing a force of about a quarter of a million men.* It is undoubted that the men thus raised by draft were treated as subject to direct national authority and were used either in filling the gaps occasioned by the vicissitudes of war in the ranks of the existing national forces or for the purpose of organizing such new units as were deemed to be required. It would be childish to deny the value of the added strength which was thus afforded. Indeed in the official report of the Provost Marshal General, just previously referred to in the margin, reviewing the whole subject it was stated that it was the efficient aid resulting from the forces created by the draft at a very critical moment of the civil strife which obviated a disaster which seemed impending and carried that struggle to a complete and successful conclusion.

Brevity prevents doing more than to call attention to the fact that the organized body of militia within the States as trained by the States under the direction of Congress became known as the National Guard (Act of January 21, 1903, c. 196, 32 Stat. 775; National Defense Act of June 5, 1916, c. 134, 39 Stat. 211). And to make further preparation from among the great body of the citizens, an additional number to be determined by the President was directed to be organized and trained by the States as the National Guard Reserve. (National Defense Act, *supra.*)

Thus sanctioned as is the Act before us by the text of the Constitution, and by its significance as read in the light of the fundamental principles with which the subject is concerned, by the power recognized and carried into effect in many civilized countries, by the authority and practice of the colonies before the Revolution, of the States under the Confederation and of the Government since the formation of the Constitution, the want of merit in the contentions that the Act in the particulars which we have been previously called upon to consider was beyond the constitutional power of Congress, is manifest. Cogency, however, if possible, is added to the demonstration by pointing out that in the only case to which we have been referred where the constitutionality of the Act of 1863 was contemporaneously challenged on grounds akin to, if not absolutely identical with, those here urged, the validity of the Act was maintained for reasons not different from those which

*Historical Report, Enrollment Branch, Provost Marshal General's Bureau, March 17, 1866.

control our judgment. (*Kneedler* v. *Lane*, 45 Pa. St. 238.) And as further evidence that the conclusion we reach is but the inevitable consequence of the provisions of the Constitution as effect follows cause, we briefly recur to events in another environment. The seceding States wrote into the constitution which was adopted to regulate the government which they sought to establish, in identical words the provisions of the Constitution of the United States which we here have under consideration. And when the right to enforce under that instrument a selective draft law which was enacted not differing in principle from the one here in question was challenged, its validity was upheld evidently after great consideration by the courts of Virginia, of Georgia, of Texas, of Alabama, of Mississippi and of North Carolina, the opinions in some of the cases copiously and critically reviewing the whole grounds which we have stated. *Burroughs* v. *Peyton*, 16 Gratt. 470; *Jeffers* v. *Fair*, 33 Georgia 347; *Daly and Fitzgerald* v. *Harris*, 33 Ga. Supp. 38, 54; *Barber* v. *Irwin*, 34 Georgia 27; *Parker* v. *Kaughman*, 34 Georgia 136; *Ex parte Coupland*, 26 Texas 386; *Ex parte Hill*, 38 Alabama 429; *In re Emerson*, 39 Alabama 437; *In re Pille*, 39 Alabama 459; *Simmons* v. *Miller*, 40 Mississippi 19; *Gatlin* v. *Walton*, 60 N. C. 333, 408.

In reviewing the subject we have hitherto considered it as it has been argued from the point of view of the Constitution as it stood prior to the adoption of the Fourteenth Amendment. But to avoid all misapprehension we briefly direct attention to that amendment for the purpose of pointing out, as has been frequently done in the past,* how completely it broadened the national scope of the Government under the Constitution by causing citizenship of the United States to be paramount and dominant instead of being subordinate and derivative, and therefore operating as it does upon all the powers conferred by the Constitution leaves no possible support for the contentions made if their want of merit was otherwise not so clearly made manifest.

It remains only to consider contentions which while not disputing power, challenge the Act because of the repugnancy to the Constitution supposed to result from some of its provisions. First, we are of opinion that the contention that the Act is void as a dele-

*Slaughter House Cases, 16 Wall. 36, 72-74, 94-95, 112-113; United States v. Cruikshank, 92 U. S. 542, 549; Boyd v. Thayer, 143 U. S. 135, 149; McPherson v. Blacker, 146 U. S. 1, 37.

gation of federal power to state officials because of some of its administrative features is too wanting in merit to require further notice. Second, we think that the contention that the statute is void because vesting administrative officers with legislative discretion has been so completely adversely settled as to require reference only to some of the decided cases; *Field* v. *Clark*, 143 U. S. 649; *Buttfield* v. *Stranahan*, 192 U. S. 470; *Intermountain Rate Cases*, 234 U. S. 476; *First National Bank* v. *Union Trust Co.*, 244 U. S. 416. A like conclusion also adversely disposes of a similar claim concerning the conferring of judicial power. *Buttfield* v. *Stranahan*, 192 U. S. 470, 497; *West* v. *Hitchcock*, 205 U. S. 80; *Ocean Navigation Co.* v. *Stranahan*, 214 U. S. 320, 338-340; *Zakonaite* v. *Wolf*, 226 U. S. 272, 275. And we pass without anything but statement the proposition that an establishment of a religion or an interference with the free exercise thereof repugnant to the First Amendment resulted from the exemption clauses of the Act to which we at the outset referred because we think its unsoundness is too apparent to require us to do more.

Finally, as we are unable to conceive upon what theory the exaction by government from the citizen of the performance of his supreme and noble duty of contributing to the defense of the rights and honor of the nation as the result of a war declared by the great representative body of the people can be said to be the imposition of involuntary servitude in violation of the prohibitions of the Thirteenth Amendment, we are constrained to the conclusion that the contention to that effect is refuted by its mere statement.

Affirmed.

A true copy.

Test:

Clerk Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 680.—October Term, 1917.

Louis Kramer and Morris Becker, Plaintiffs in Error, *vs.* The United States.	In Error to the District Court of the United States for the Southern District of New York.

[January 14, 1918.]

Mr. Chief Justice White delivered the opinion of the Court.

In this case, as in No. 702, just previously decided, because of constitutional questions the case was brought here by direct writ of error with the object of reviewing and reversing a conviction and sentence under an indictment charging an unlawful conspiracy to induce persons whose duty it was to register under the Selective Draft Law not to perform that duty and alleging overt acts done for the purpose of carrying out the illegal conspiracy. The defenses were substantially the same as those urged in the previous case and the assignments of error made at the time of the allowance of the writs were identical. In fact at bar the propositions and arguments relied upon in the previous case were stated to be controlling in this. But, therefore, for the fact that there was different evidence in the two cases the considerations which control the one control the other. No distinction, however, results from that difference since we are of opinion in this case as we were in the other after an examination of the entire record that the contention that there was no evidence tending to show guilt and hence the case should have been taken from the jury is without merit.

As thus any conceivable distinction between the two cases is removed, it follows that for the reasons stated in the *Goldman* case, just decided, and in the *Arver* case, *ante* p. —, as to the constitutional questions, the judgment below in this case must be and it is

Affirmed.

SUPREME COURT OF THE UNITED STATES.

No. 738.—October Term, 1917.

Albert Jones, Appellant, *vs.* H. W. Perkins, Deputy United States Marshal, and M. G. Whittle, Jailor of Richmond County, Georgia.	Appeal from the District Court of the United States for the Southern District of Georgia.

[January 7, 1918.]

Mr. Chief Justice White delivered the opinion of the Court.

Jones, the appellant, was arrested under a warrant charging him with a failure to register as required by the Act of Congress of May 18, 1917, known as the Selective Draft Law. (Public No. 12, 65th Congress, c. —, — Stat. —), and after a hearing by a United States Commissioner was committed to custody to await the ensuing term of the United States District Court. Alleging that he was illegally restrained because the statute under the assumed authority of which he was held was repugnant to the Constitution of the United States, he petitioned the court below for a writ of *habeas corpus*. Following a rule to show cause and a hearing on the return thereto the petition was denied on the ground that the statute was constitutional (243 Fed. Rep. 997), and to reverse the order so adjudging this direct appeal was prosecuted.

It is well settled that in the absence of exceptional circumstances in criminal cases the regular judicial procedure should be followed and *habeas corpus* should not be granted in advance of a trial. *Riggins* v. *United States*, 199 U. S. 547; *Glasgow* v. *Moyer*, 225 U. S. 420. *Johnson* v. *Hoy*, 227 U. S. 245. If that rule applied, therefore, our duty would be to affirm unless this case could be treated as coming within the exceptional class. But we do not deem it necessary to enter into that consideration because even if it were found to be embraced in such class every constitutional question relied upon has been this day in *Arver* v. *United States*, *ante*, p. —, decided to be without merit. Because of this situation, therefore, without departing from the general principle, we think it suffices in this case to apply the ruling made in the *Arver* case and for the reasons stated in the opinion therein, to affirm.

And it is so ordered.